

**CRITICAL REVIEW OF  
“THE ECONOMIC IMPACTS OF RIGHT OF FIRST REFUSAL (ROFR)  
LEGISLATION”**

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## SECTION 1:

**SUMMARY OF THIS RESPONSE**

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Since the early 1990s, the Federal Energy Regulatory Commission (FERC) has undertaken many initiatives to promote various policy goals, including open and transparent local and regional planning and the development of efficient and cost-effective electric transmission. In 2011, the FERC issued Order No. 1000 with additional rules and regulations governing transmission planning and service.<sup>1</sup> One such change was a directive to remove the Right of First Refusal (Federal ROFR) in FERC-jurisdictional tariffs and agreements for regional transmission facilities selected in a regional transmission plan for cost allocation.<sup>2</sup> As a result of the changes in Order No. 1000, certain natural monopoly transmission facilities that qualify for regional cost allocation are subject to a FERC-mandated competitive process in the hope that such a process would result in lower-cost transmission projects and, eventually, lower cost service to customers. As we now know, however, FERC's policy on competitive transmission has not delivered these benefits and, in fact, has contributed to delays in replacing and enhancing the nation's energy infrastructure. (*See, e.g.,* Concentric Energy Advisors, 2019, 2022, and 2024.)

Notwithstanding evidence that elimination of the Federal ROFR has not led to lower costs for customers, Roberts (2024) ("Pelican ROFR Report") presents a statistical model that attempts to show that from 2012-2017 a Minnesota state ROFR law, passed after Order No. 1000, raised prices to certain customers in Minnesota. There are major problems with the methodology and results of this study that render it useless for its purported purpose.

- **The Pelican ROFR Report mismeasures the timing of the change in FERC's ROFR policy.** The report assumes that the directive to remove Federal ROFR was effective as of the date of issuance of FERC Order No. 1000 (summer 2011). Yet, the implementation date of the new policy did not occur until nearly two years later following rehearing and compliance filings by the affected parties.

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<sup>1</sup> *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011). The ROFR provided that the right to build a proposed transmission project was first offered to the incumbent utility in whose service territory the project was located. If the utility declined, then the project was opened to non-incumbent entities. Prior to Order No. 1000, the ROFR applied to both local, generally within state, transmission projects and projects that affected more than one non-affiliated incumbent transmission provider (i.e., regional projects). Order No. 1000 removed the ROFR for regional projects and created competitive processes for the right to build regional projects approved as part of the formal transmission planning process and subject to cost sharing rules (i.e., projects that benefit the larger regional transmission grid).

<sup>2</sup> In November 2024, FERC clarified that the removal of the Federal ROFR did not apply to "right-sized" replacement facilities. FERC Order No. 1920-A (November 21, 2024), pp. 689-690.



- **No competitive transmission projects were completed in the region during the timeframe evaluated in the study.** Due to the long planning cycles and often considerable time to construct transmission projects, as well as the effective implementation date of the FERC policy, there were no Order No. 1000 competitive transmission projects placed into service in the region during the timeframe studied in the report. Thus, the report cannot measure the effect of the state-level ROFR law on retail electricity rates. There is simply no mechanism—theoretically or practically—by which the effects claimed in the Pelican ROFR Report could materialize.
- **The Pelican ROFR Report mischaracterizes the changes in prices between Wisconsin and Minnesota prior to 2012 causing biased results.** Electricity prices were diverging between Minnesota and Wisconsin prior to 2012 and were almost certainly not changing at the same pace. Yet, the Pelican ROFR Report assumes that rates would otherwise follow parallel paths. This is a critical failure of assumption, the effect of which caused biased results (even if the report had studied a more appropriate timeframe). Moreover, one can easily find the same relationship of prices between Wisconsin and other states that did not pass a ROFR law, suggesting that this study either (1) cherry-picked Minnesota to use as the treatment case or (2) at a minimum, did not undertake enough sensitivity analysis to justify choosing Minnesota as the treatment case.
- **The Pelican ROFR Report provides estimates of the effect of the Minnesota ROFR law on transmission rates that are not believable.** The report claims to estimate that Minnesota transmission rates were as much as sixty percent higher solely due to the passage of the Minnesota ROFR law in 2012. This is an impossibly high number considering that both the FERC and the Minnesota regulator pass judgment on transmission costs (as does FERC and the Wisconsin regulator for Wisconsin).
- **The facial results of the Pelican ROFR Report provide little evidence of the claimed effects.** Even if one could ignore these fatal flaws, the study, on its face, provides little evidence of the effect on retail rates because (1) the study only reviews commercial and residential rates, not overall retail rates; and (2) the effect on residential rates is statistically insignificant, suggesting that the Minnesota ROFR law had no effect on residential rates.
- **The study ignores the most plausible explanation for the change in Wisconsin electric rates after 2011.** The report does not even attempt to adjust for major factors that likely impacted rates, such as the relative mix of coal and natural gas in the two states. This is important since natural gas prices fell significantly around 2011, and Wisconsin generated much more electricity from natural gas over the next decade than Minnesota. The same is true for coal. While both states reduced reliance on coal over the 2010s, Wisconsin had a



higher percentage of coal in its generation portfolio after 2011. Not controlling for these variables conflates the results and, given that the treatment is measured from 2011, the results are almost certainly reflecting the differences in generation mix between the two states rather than the effect of the Minnesota ROFR law. (Note: the study does attempt to control for renewable generation but finds no statistically significant effect of renewable generation on retail rates in Minnesota relative to Wisconsin.)

- **The Report also ignored the effect of transmission investment in Wisconsin.** Wisconsin is unique in that it has a single transmission company, American Transmission Company (ATC). When ATC was first created, it had \$1.1B of transmission plant in service in 2001. By 2011, transmission plant had grown to \$3.7B, and by 2017 it had grown to \$5.5B, the last year the Pelican ROFR Report studies. This substantial investment in transmission created a more integrated transmission grid in Wisconsin, reducing outages and lowering costs for consumers. None of this transmission investment was the result of the Order No. 1000 competitive process and yet Wisconsin electric rate inflation fell after 2011.

These problems with the Pelican ROFR Report render it logically unsound, statistically invalid, and facially implausible. The report shows little understanding of the actual operation of the electricity sector and its regulation while presenting facts that are either cherry-picked for effect or not tested sufficiently for purposes of a statistical model. Finally, given the long gestation period for transmission projects, the fact that few Order No. 1000 competitive transmission projects are in service, and the complex interrelationships between different parts of electricity rates, using this type of modeling is not likely to provide any useful information concerning the effect of ROFR laws on retail rates. Other approaches, such as studying the actual results of competitive bidding, are more likely to yield useful information concerning the effect of FERC Order No. 1000's removal of the Federal ROFR. Studies that evaluate the actual results of the FERC Order No. 1000 competitive process show that competitive bidding for transmission has not yielded any significant benefits and slows the process of building transmission. (*See, e.g.,* Concentric, 2019, 2022, and 2024.)

## SECTION 2:

**THE COMPONENTS OF AVERAGE RETAIL ELECTRICITY PRICES**

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The Pelican ROFR Report uses the US Energy Information Administration's (EIA) calculations of average retail price for commercial and residential customers. The EIA calculates the average retail price by summing revenues and dividing by total sales. Revenues, as defined by EIA, are from the following charges:

1. **Base rates** include fixed charges, volumetric charges, and demand charges, if applicable. Base rates cover the cost of the infrastructure to produce (i.e., generate electricity) and deliver energy to consumers (i.e., low voltage local distribution and high voltage transmission) and may also include some fuel costs.
2. **Fuel and power purchase charges** include the cost of fuel to produce electricity and power purchased by utilities to serve end-use customers.
3. **Environmental charges** include the cost of procuring renewable energy and running energy efficiency programs and may also include other environmental costs.
4. **Other Miscellaneous Fees** may include fees for additional meters or riders to recover reasonable utility costs not recovered elsewhere in electric rates. Other fees may include local income taxes, franchise fees, and other miscellaneous charges applied to end-use customers during normal billing operations.

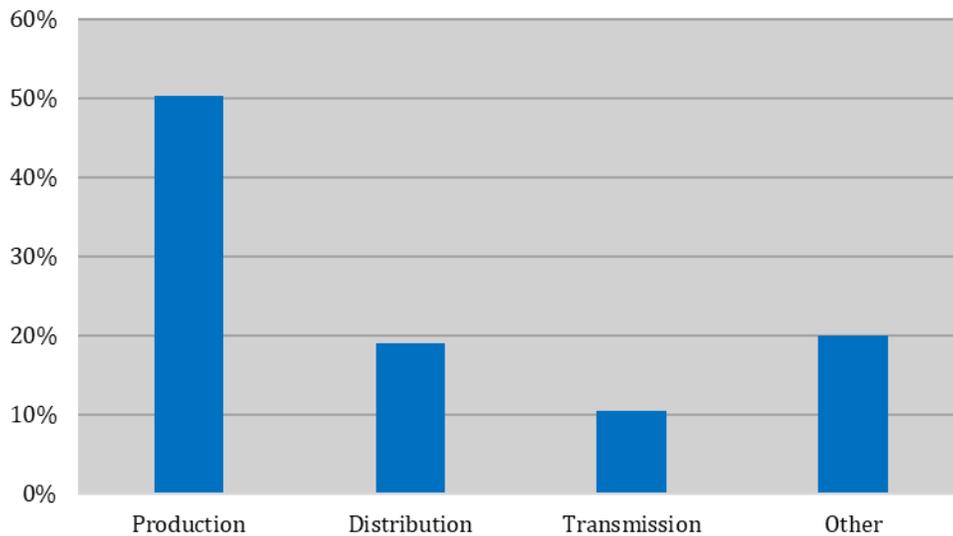
Figure 1 illustrates the relative makeup of typical electric rates broken down by production, distribution, transmission, and other costs. Transmission costs are ordinarily the smallest part of electric rates, typically making up about ten percent of the total rates, though this varies by region and has grown to a moderately larger fraction in certain regions in recent years. It is worth noting that some elements of electricity rates are interrelated, though only to a limited extent, and are often influenced by exogenous factors. For example, (1) increased transmission development can reduce congestion and put downward pressure on production costs and wholesale market prices; and (2) fuel prices, which are largely affected by factors outside the control of utilities, including geopolitical events, can considerably affect production costs.

It is important to note that the transmission investment included in retail electricity rates is the (depreciated) cost of the cumulative transmission investment over time. The Federal ROFR policy affects only investment on a going-forward basis from the time of implementation, which was much later than FERC's initial issuance of Order No. 1000. As noted below, no incremental transmission investments subject to the FERC Order No. 1000 competitive process affected rates during the



2007-2017 timeframe that the Pelican ROFR Report studies. Even after 2017, the incremental effect of the small number of projects subject to the FERC's competitive process are likely to have a *de minimis* effect on overall retail rates since these investments only affect a portion of the incremental transmission rate, which in turn is only a portion of a relatively small part of overall rates. As noted previously, studies that examine the actual results of Order No. 1000 competitive processes have found that competitive solicitations have not resulted in lower costs, even for the small number of projects subject to these processes.

**Figure 1: Composition of Electric Rates**



Source: <https://www.eia.gov/todayinenergy/detail.php?id=55639#>

## SECTION 3:

**THE PELICAN ROFR REPORT IS FLAWED AND DOES NOT SUPPORT THE CONCLUSION THAT MINNESOTA'S ROFR LAW INCREASED RETAIL RATES**

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As shown below, one can concoct nearly any relationship between two states' electricity prices over a short timeframe. The methodological issues raised in this response suggest that the Pelican ROFR Report is not robust to the facts of the electric industry in Wisconsin and Minnesota during the 2010s nor to the modeling choices in the Pelican ROFR Report. As a result of these flaws, the Pelican ROFR Report provides no credible evidence of an effect from the FERC Order No. 1000 competitive process or from the Minnesota ROFR law.

**The Pelican ROFR Report Cannot Measure the Effect of Order No. 1000 on Retail Electric Rates Since Its Study Period Ends Prior to Any Competitively Bid Transmission Projects Being Added to Rates**

The Pelican ROFR Report claims that the sample period, January 2007 to December 2017 (the "Study Period"), was chosen to capture "the period before and after FERC Order No. 1000, which was issued in July 2011, and Minnesota's implementation of the Right of First Refusal in 2012." (Pelican ROFR Report, p. 11.) Yet the Study Period does not capture the period before and after Order No. 1000 since it does not coincide with the effective operation of the requirements in Order No. 1000. While FERC Order No. 1000 was issued on July 21, 2011, its operational date was nearly two years later when FERC accepted compliance filings which included the changes to FERC-approved tariffs implementing the removal of the Federal ROFR. The Pelican ROFR Report does not mention this fact, nor does it explain how beginning the Study Period years before any potential competitive bidding could occur measures the effect of Order No. 1000. The answer is plain: the Pelican ROFR Report does not measure the effect of Order No. 1000.

More directly, competitive bidding for transmission in the Midcontinent Independent System Operator (MISO) footprint—which includes Minnesota and Wisconsin—was not even implemented until the 2015 MISO expansion plan with the first project awarded in December 2016 for a line from Indiana to Kentucky (Duff to Coleman line). Even more problematic is that the Duff to Coleman line did not go into service until June 2020, a full two and a half years after the Study Period. (S&P, 2020.) Any effect on MISO rates, or any other rates, would have occurred long after the Study Period. Moreover, this is the only MISO competitive solicitation that even began during the Study Period, let alone entered rates during the Study Period. (Id.) Yet the Pelican ROFR Report claims that Order No. 1000 had some mystical effect on Wisconsin retail rates starting with the stroke of the pen in 2011 even though no Order No. 1000 competitive solicitations for transmission investment in Wisconsin, or anywhere in MISO, could have affected rates in those states during the Study Period. That is, transmission investments that occurred in both Minnesota and Wisconsin



between 2012 and the end of the Study Period were completed by local incumbent utilities, not through the Order No. 1000 competitive transmission process. Whatever the Pelican ROFR Report is measuring, it does not measure the effect of Order No. 1000 competitive transmission process on retail rates.

The Pelican ROFR Report uses monthly prices to detect the effect of transmission investments on rates. Transmission investment has nearly no discernible effect on transmission rates over such short periods since the effect of transmission investment on retail rates does not change that often. In addition, transmission lines are not built overnight. Even relatively small projects can take years from conception to in-service and perhaps months after the in-service date until the investment appears in rates. If Order No. 1000's competitive process had some effect on the utilities who built transmission in Wisconsin, that effect would not show up in rates for years after a competitive solicitation. Since the study only looks at six years after Order No. 1000 was passed, only five years after the Minnesota ROFR law was passed, and only four years after MISO's Order No. 1000 process compliance process was implemented, it is impossible to justify the conclusion that the ROFR law or FERC's Order No. 1000 had any effect on rates over this timeframe.

The fact that the observed rate trend change seems to take place starting in 2011, when it is, in fact, impossible that Order No. 1000 could have affected rates in the MISO footprint that soon, suggests there is some other precipitating event causing the change in rates. Indeed, the Pelican ROFR Report fails to consider whether Order No. 1000 had any practical impact in Wisconsin and Minnesota over the study timeframe, nor does it attempt to explain any linkage between changes in transmission policy, the timing thereof, and changes in observed rates. As noted elsewhere, not a single transmission project was placed into service in either state during the Study Period that was subject to Order No. 1000 competitive bidding or even would have been subject to Order No. 1000 competitive bidding absent a ROFR law.

Moreover, projects eligible for competitive bidding under Order 1000 are those with costs allocated broadly across the transmission planning region, subject to certain exclusions. In MISO, regional transmission solutions subject to cost sharing over the region (or, potentially, sub-regions) are Multi-Value Projects (MVPs) and Market Efficiency Projects (MEPs). Most projects of these types approved prior to FERC Order No. 1000 and therefore assigned to the incumbent transmission owner were completed after 2017 and would have no effect on rates during the Study Period. Even to the extent that rates were affected, the cost-sharing is implemented on a load-ratio share between regions meaning that each set of customers is similarly affected. Thus, there is no basis to support the conclusion that a state ROFR law in Minnesota had any impact at all on electricity price differences between Minnesota and Wisconsin during the Study Period.

Moreover, the type of study performed in the Pelican ROFR Report, even if completed correctly, is not ripe for application to the transmission system for many years to come when enough Order No.



1000 competitively bid transmission projects might have a chance to affect rates. Currently, studies that review actual results of the Order No. 1000 competitive process are more likely to shed light on the issue. (See, e.g., Concentric 2019, 2022, and 2024.)

### **The True Story About Changes in Retail Electric Prices Does Not Support the Conclusion That ROFR Laws Caused Rates to Increase**

While the difference-in-difference (“DD”) method used in the Pelican ROFR Report has been applied to state-level policy changes to detect differences in results between jurisdictions, there is a critical assumption underlying this analysis, called the parallel trend, which is fundamental to the analysis and also the most difficult to approximate in real life.<sup>3</sup> Effectively this means that, absent the treatment—in this case the passing of the ROFR law in Minnesota—the trend in prices between Minnesota and Wisconsin is assumed constant over time. If this assumption is not valid, then the results are biased. While there is no statistical test, best practices suggest that the analyst collect more data to test the theory of parallel trends and that the analyst understand the effect of the intervention. As noted above, the assumption that intervention occurred with the passage of Order No. 1000 is wrong, causing the entire study to contain flawed and biased results. Even if that were not the case, the analysis is still flawed since it misunderstands how rates have changed in different states during the early part of the 21<sup>st</sup> century.

The Pelican ROFR Report concludes “commercial and industrial [presumably this is an error, and the report meant residential] ...prices... [in Wisconsin and Minnesota] ...were rising at similar rates...prior to FERC Order 1000.” The Pelican ROFR Report goes on to conclude: “[B]eginning in 2012, the Wisconsin electricity price inflation slows dramatically. This change in trend occurs immediately after FERC Order... [ No.] ...1000; while the rising price trend in Minnesota is essentially constant throughout the sample period.” The report provides no quantification or other testing of these conclusions. With a longer timeframe, we can test the sensitivity of these conclusions to the choice of the Study Period. Figure 2 shows the average retail price for all sectors going back to 2004 and ending in 2023. When adding just a few more years of data, we see that the Wisconsin and Minnesota prices were diverging, not changing at the same rate prior to 2012 (though with similar seasonality as is expected). Going back to 2001, we see a similar pattern (not shown in the graph). The only date when rates change at roughly the same pace is when the analyst starts with 2007 and ends with 2017. After 2012, Wisconsin’s rates do indeed begin to converge with Minnesota, though Minnesota rates also begin to reduce their ascent. That is, something happened around 2012 that caused **all** rates in the region to begin to decelerate and Wisconsin’s rates, in particular. The next section contains a discussion of what might have occurred.

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<sup>3</sup> The DD method is a quasi-experimental design (i.e., not a random sampling approach) which depends heavily on the choice of treatment and control groups to produce a valid counterfactual from which to estimate a causal effect of the treatment.



These patterns in average retail prices are not that unusual and have nothing to do with the passage of state-level ROFR laws. Other states show a similar pattern as well, even those that are significantly different than Wisconsin. Alternatively, states with a ROFR law can show the opposite relationship. For example, North Dakota passed a similar ROFR law well over a year earlier than Minnesota, yet not only have North Dakota's rates decelerated after 2012, but electricity rates in North Dakota have also remained largely flat. (Figure 3.)

What is occurring is well-known in the industry. With some exceptions, rates across jurisdictions, especially those in the same region, tend to converge over some periods and diverge over others. The reason is straightforward. The infrastructure rates for utilities are not set in a market where the law of one price tends to hold. Rather, these rates are set based on the, often, historic accounting costs of the local utility including the depreciated historic value of assets.<sup>4</sup> Depending on expansion patterns and historical investment, depreciated cost can differ between jurisdictions for some time due to the long-lived nature of the assets. We might not expect, however, for rates to diverge indefinitely because all utilities, especially in the same region, have access to the same technology and largely plan and expand systems in a comparable manner.

In addition, regulators have significant control over price levels and, to an even greater extent, over the prices paid by different customer classes. Regulatory choices, such as allowing certain costs into rates or setting allowed returns, affect not only the level of rates but also the timing of when utilities choose to request rate increases. For example, the only statistically valid effect found in the Pelican ROFR Report was for commercial customer class rates, yet it appears that Minnesota, after 2011, allocated more costs to the commercial class relative to the industrial class.<sup>5</sup> This has the effect of increasing commercial rates in Minnesota relative to Wisconsin over the post Order No. 1000 period, though this has no relationship to Order No. 1000.

In addition, rates are developed from revenue requirements that often include costs that are not directly related to providing current service, even though these costs were prudently incurred. Embedded in electricity rates are a vast range of investment and regulatory decisions spanning decades. Beyond capital expenses, these include costs of policy implementation, environmental cleanup, deferred expenses, and a host of other costs that, if deemed prudently incurred by the regulator, are included in the revenue requirement and, in turn, the measure of average rates. Since each jurisdiction has its own policies and its own approach, one would reasonably expect different results. One might also naturally consider, and control for, all manner of other drivers of electricity rates and revenues when trying to tease out the effect of a single policy change. The Pelican ROFR Report fails to grapple with or even acknowledge these realities.

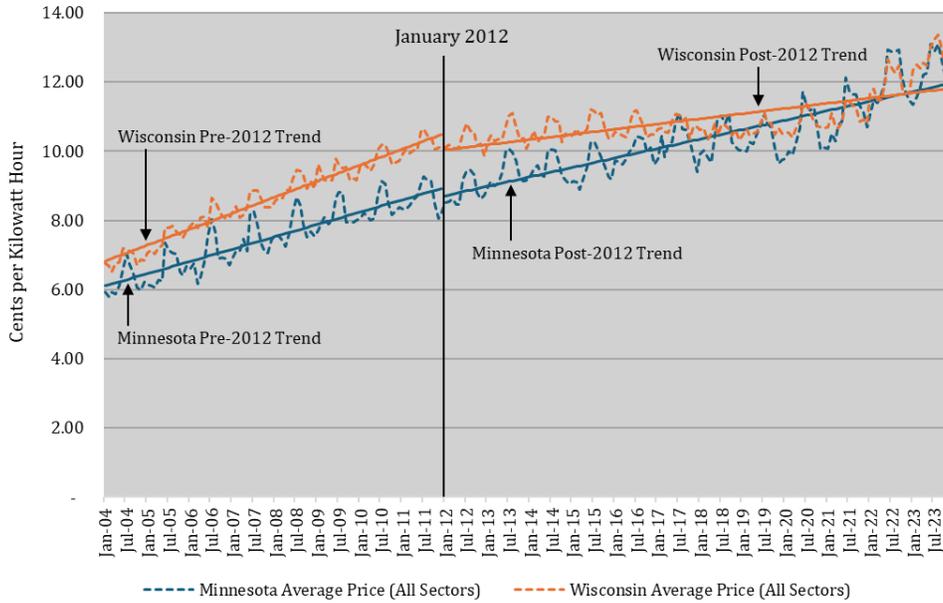
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<sup>4</sup> Fuel rates are related to exogenous factors such as market conditions.

<sup>5</sup> Wisconsin does allocate more costs to the commercial class than Minnesota, but the Wisconsin allocation has remained roughly constant over time. This pattern is found by comparing the average ratio of commercial to industrial rates in the two states from 2007-2011 to the average from 2012-2017.

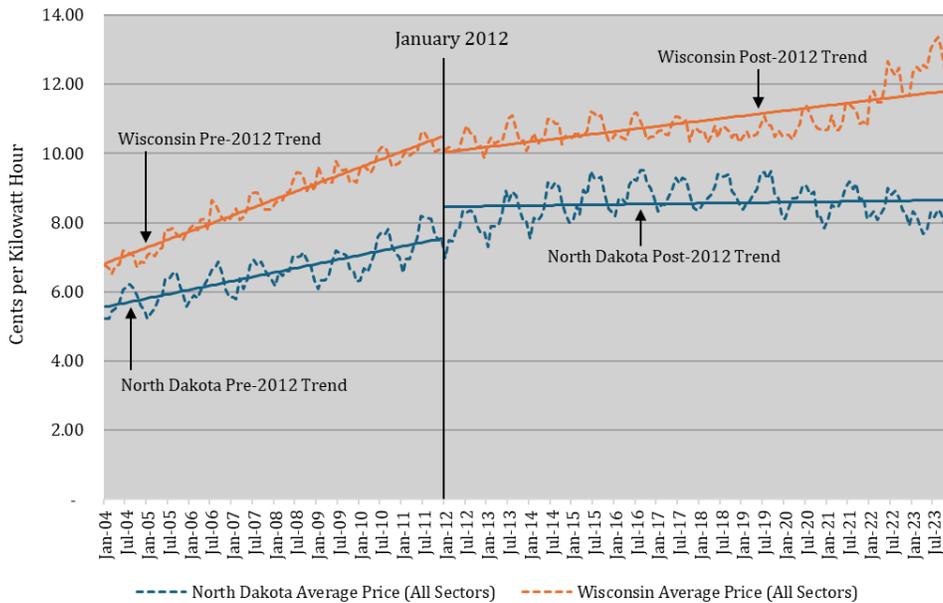


**Figure 2: Trend in Average Electric Prices (All Sectors) in Minnesota and Wisconsin (2004-2023)**



Source: U.S. Energy Information Administration (EIA), Form EIA-861, available through the EIA Electricity Data Browser ([eia.gov/electricity/data/browser/](http://eia.gov/electricity/data/browser/))  
Trendline analysis completed by author.

**Figure 3: Trend in Average Electric Prices (All Sectors) in North Dakota and Wisconsin (2004-2023)**



Source: U.S. Energy Information Administration (EIA), Form EIA-861, available through the EIA Electricity Data Browser ([eia.gov/electricity/data/browser/](http://eia.gov/electricity/data/browser/))  
Trendline analysis completed by author.



## **The Results from the Pelican ROFR Report Are Inconsistent and Statistically Suspect**

While the Pelican ROFR Report provides some statistical measures such as t-scores, setting aside the more fundamental issues raised above, the resulting statistical tests do not completely support the strong conclusions in the report. For example, when running the model solely using residential prices, the results are not statistically significant, meaning one cannot claim the Minnesota ROFR law increased rates for residential customers. This is surprising since all customers share in the cost of transmission. Given the simplistic nature of the type of model used in the Pelican ROFR Report, if the Minnesota ROFR law influenced retail rates, one would expect that to show up over all customer classes. The report does not even try to explain these odd results.

The main story told by the Pelican ROFR Report is that the change in the nominal price of electricity in Minnesota was essentially the same as Wisconsin prior to 2012 but that Wisconsin's trajectory of prices changed dramatically after 2012. The report claims this is due to FERC Order No. 1000 removing the Federal ROFR for transmission projects, which affected Wisconsin, but did not affect Minnesota since that state passed a ROFR law presumably muting the effect of FERC Order No. 1000. While the Pelican ROFR Report's central premise is flawed and unsupported, a review of what occurred in Wisconsin during the Study Period does reveal far more plausible explanations for the change in Wisconsin rates around 2012, as opposed to legislative or regulatory policy changes.

## **Wisconsin's Generation Mix Benefited from Lower Gas Prices and Investment in Certain Generation Resources by Local Utilities Putting Downward Pressure on Price Changes During the Study Period**

Prior to 2011, natural gas prices had been historically high. (Figure 4.) After 2011, with minor exceptions, natural gas prices fell to historically low levels, largely due to the Shale gas revolution. While both Minnesota and Wisconsin increased reliance on natural gas over the 2010s, Wisconsin moved significantly more toward natural gas in its overall generation portfolio taking advantage of both low capital costs of building natural gas generation and the low operational costs stemming from the lower cost of gas. In 2010 natural gas made up roughly the same percentage of overall electricity production in Minnesota and Wisconsin. By 2011, Wisconsin produced significantly more electricity from natural gas as a percentage of overall generation, and, except for 2013, the difference began to grow just as gas prices began to fall. (Figure 4.)<sup>6</sup> Since fuel costs make up a significant portion of the overall retail rate, changes in fuel expenses have an outsized effect on the average retail rate compared to the relatively small effect of transmission costs.

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<sup>6</sup> Between 2011 and 2017, fuel costs per kWh for Wisconsin's largest electric utility fell about three-and-one-half percent, while fuel costs for Minnesota's largest utility increased by about three percent. (Data from FERC Form 1.) This implies a difference in average rates solely due to fuel of about 0.131 cents per kWh from 2011 to 2017.



Wisconsin also invested in coal generation with major new assets coming online exactly at the inflection point of Wisconsin electric prices. We Energies' Elm Road Generation station's two coal-fired units went into service in 2010 and 2011, adding over 1,200 MW of coal generation to Wisconsin's generation portfolio, at which point the associated costs would have been reflected in retail rates.<sup>7</sup> This investment was preceded by We Energies building 1,000 MW of gas-fired generation at its Port Washington station.<sup>8</sup>

Coal and renewable generation have followed distinct patterns in Minnesota and Wisconsin since 2012. Minnesota increased its share of renewables more than Wisconsin with a significant and sustained increase occurring in 2012. (Figure 5.) While both states have moved away from coal, Wisconsin, as noted above, increased coal generation relative to Minnesota, and that relative difference has remained since 2011. Interestingly, the Pelican ROFR Report tries to control for wind generation changes in Minnesota by including a wind generation variable. There are two problems with this approach. First, the magnitude of the estimated effect is exceedingly small, though the estimate implies that wind reduced rates in Minnesota relative to Wisconsin. Second, the estimate is not statistically significant, suggesting that renewable power had no effect, one way or the other, on Minnesota rates. Yet, when including the wind variable, the estimated effect of the ROFR law in Minnesota increases by nearly twenty percent. (Compare 0.298 in Appendix Table 1 with 0.353 in Appendix Table 2, Pelican ROFR Report.) As noted above, transmission rates are an exceedingly small part of the overall average retail rate, especially when viewed in the context of the incremental effect of new transmission on retail electric rates. If the results of the Pelican ROFR Report are to be believed, Minnesota transmission rates are nearly sixty percent higher than had Minnesota not passed the ROFR law (not even controlling for other factors). This is even more difficult to justify than the estimate without the wind control variable since this is due solely to the *expectation* that competitive transmission might occur at some point in Wisconsin since no actual Order No. 1000 competitive transmission did occur. There is no plausible explanation for how such a rate change could materialize in the real world.

Finally, the report misunderstands FERC policy and overstates the results that the report did not measure. While claiming that "[W]ind generation is associated with lower electricity prices," the author goes on to claim that "one of the key costs of Minnesota's ROFR policy is slowing development of transmission that could bring Minnesota's ample wind resources to high electricity demand markets more readily." (Id.) This is a misunderstanding of FERC's policy. FERC's policy removed ROFR for "transmission facilities selected in a regional transmission plan for purposes of cost allocation." (FERC Order No. 1000, p. 174.) If a transmission investment is determined necessary as part of a transmission plan, that facility is built whether by the local utility or through

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<sup>7</sup> Around the same time, Xcel Energy in Minnesota invested in gas generation by retrofitting several coal plants to operate on natural gas.

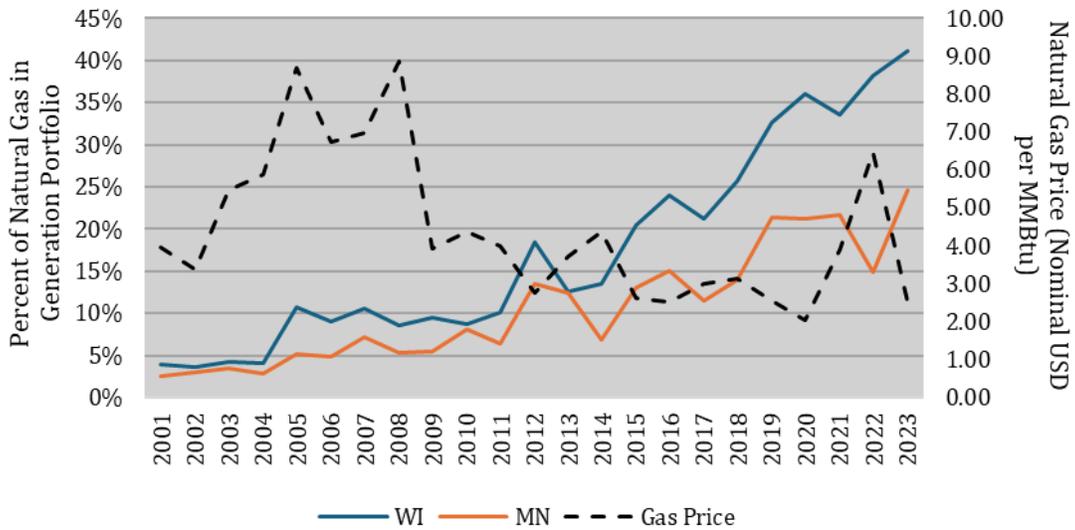
<sup>8</sup> The Port Washington gas plants came online in 2005 and 2008, respectively.



an Order No. 1000 competitive bidding process. Moreover, the Pelican ROFR Report does not even attempt to estimate the effect of ROFR laws on “slowing development of transmission.” It is now well understood that the effect of Order No. 1000 competitive processes is exactly the opposite as claimed in the Pelican ROFR Report: these processes tend to add significant time to the overall development of a transmission project. (*See, e.g., Concentric, 2022.*)

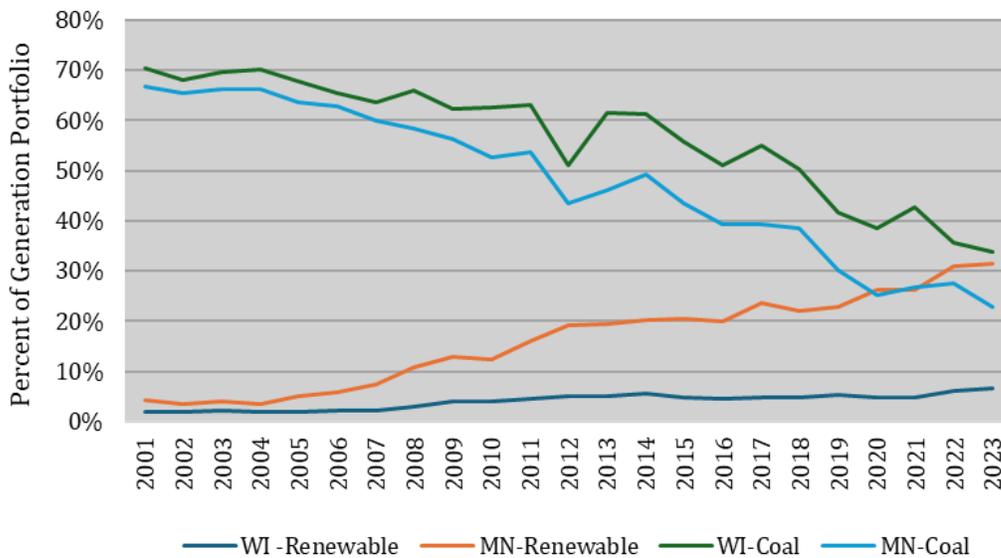


**Figure 4: Natural Gas in Generation Portfolio of Minnesota and Wisconsin**



Source: U.S. Energy Information Administration (EIA), Form EIA-923, available through the EIA Electricity Data Browser ([eia.gov/electricity/data/browser/](http://eia.gov/electricity/data/browser/))

**Figure 5: Coal and Renewable Generation Portfolio in Minnesota and Wisconsin**



Source: U.S. Energy Information Administration (EIA), Form EIA-923, available through the EIA Electricity Data Browser ([eia.gov/electricity/data/browser/](http://eia.gov/electricity/data/browser/))



## **Electric Transmission Investment by Wisconsin Utilities Increased Over 2007-2017 Benefiting Wisconsin Consumers Without a Single Order No. 1000 Competitive Transmission Line Built**

Wisconsin is somewhat unique in that the state's utilities collectively own ATC. ATC began operation in the early 2000s after the state decided transmission investment was necessary to improve the reliability of the network. ATC claims to have improved reliability by over thirty percent since it began operation. (Marsan, 2023.) ATC began with \$1.1B in gross plant in 2001 and today (2023) its gross plant in service exceeds \$7.8B. (ATC Annual Reports to the Public Service Commission of Wisconsin.) Wisconsin's transmission network has moved from a trouble spot in the late 1990s to a robust utility operation that reduces costs by reducing outages and allowing the lowest cost generation to serve the market.

ATC has unique experience with ROFR and competitive bidding for transmission. When Minnesota passed its ROFR law, ATC was opposed to the legislation largely because it believed, as many did at the time, that competition is always a good result despite the evident conditions of natural monopoly. ATC believed that companies, like itself, could compete against incumbents, win, promote innovation, and lower costs. Their actual experience convinced them that was not the case. (Marsan, 2023.) Years later, in 2023, when the Wisconsin legislature debated whether to pass its own ROFR law, ATC had concluded that competitive bidding under Order No. 1000 was a failure and ROFR laws actually promote lower-cost transmission projects. (Id.) Yet the Pelican ROFR Report claims to detect the benefit of Wisconsin not enacting a ROFR law, despite the fact that no competitive transmission under Order No. 1000 was built in Wisconsin during the Study Period and no potential competitive transmission developer was willing to state that projects subject to a FERC Order No. 1000 competitive process would lower costs. (Marsan, 2024.)

## SECTION 4:

**CONCLUSION**

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The Pelican ROFR Report does not show that state ROFR laws cause higher prices for customers. The report does not measure the impact of FERC's Order No. 1000, since the report begins the measurement years before the impact of that decision could have been felt. The report also ends the analysis in 2017, years before even a single transmission project in MISO came into service through the FERC Order No. 1000 competitive process. The report also overlooks the most obvious reason for Wisconsin's reversal in electric price inflation by the early 2010s, investment in the system by local public utilities, not a competitive threat from non-incumbent transmission owners that could not have materialized by that time.

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